United States Court of Appeals

for the Second Circuit

INTERVENOR'S BRIEF

76-4147

IN THE UNITED STATES COURT OF APPEALS

FOR THE SECOND CIRCUIT

DOCKET NO. 76-4147

AAACON AUTO TRANSPORT, INC.
Petitioner,

v.

INTERSTATE COMMERCE COMMISSION
and UNITED STATES OF AMERICA,
Respondents.

ON PETITION FOR REVIEW OF AN ORDER OF
THE INTERSTATE COMMERCE COMMISSION

OPENING BRIEF OF AUTOMOBILE TRANSPORT, INC., BAKER DRIVEAWAY COMPANY, INC., KENOSHA AUTO TRANSPORT CORPORATION, M & G CONVOY, INC., GATE CITY TRANSPORT CO., SQUARE DEAL CARTAGE CO., AND NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, INTERVENING RESPONDENTS

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Dated: October 11, 1976

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NOW COME AUTOMOBILE TRANSPORT, INC., BAKER DRIVEAWAY COMPANY, INC., KENOSHA AUTO TRANSPORT CORPORATION, M & G CONVOY, INC., GATE CITY TRANSPORT CO., SQUARE DEAL CARTAGE CO., AND NATIONAL AUTOMOBILE TRANSPORTERS ASSOCIATION, intervening respondents in this matter, and respectfully

submit for the consideration of this honorable Court their brief in opposition to the Petition for Review. In support thereof, they respectfully state as follows:

I.
STATEMENT OF THE CASE

Under judicial review in this proceeding is an Order of the Interstate Commerce Commission, Division 1, reported as AAACon Auto Transport, Inc. - Investigation and Revocation of Certificate 124 M.C.C. 493 (No. MC-C-7287, embracing No. MC-C-7287 (Sub. No. 1) and No. FF-359, Div. 1, 1976) (R. A., p. 1793) in which the Commission found petitioner, AAACon Auto Transport, Inc. ("AAACon"), to have engaged in unjust and unreasonable practices in violation of Sections 20(11), 219 and 216(b) of the Interstate Commerce Act and to have operated unlawfully beyond the scope of its authority in Certificate MC-125808 (Sub. No. 1), in violation of Section 206(a) of the Interstate Commerce Act and requiring petitioner to cease and desist from such operations, denying the declaratory relief requested by AAACon in MC-C-7287 (Sub. 1) and further denying the application of AAACon's affiliate, Auto Trip U.S.A., Inc. ("Auto Trip") for a freight forwarder permit.

II.
NATURE OF AGENCY PROCEEDING

The proceeding in MC-C-7287 was an investigation proceeding ordered by the Interstate Commerce Commission in March of 1971 pursuant to Sections 204(c) (R. A., p. 1794) and 212(a) of the Interstate Commerce

Act with a view to determining whether AAACon was performing operations not authorized by its certificate of public convenience and necessity MC-125808 (Sub. 1) in violation of Section 206(a) of the Act and engaging in unjust and unreasonable practices in connection with matters relating to the transportation of automobiles, in driveaway service, in interstate or foreign commerce, including, but not limited to, its treatment in handling of claims for damages or losses to property arising from such transportation, its issuance of, and practices in connection with, bills of lading which incorporated unreasonable provisions, and incorporated provisions which were at variance with those of the Uniform Bills of Lading governing said transportation and with the holding out to the public by said carrier regarding the insurance coverage and bonding of drivers.

The proceeding in FF-359, Auto Trip USA, Inc. Freight Forwarder Application originally filed in December of 1968 (R.A., p. 1) was reopened by the Commission in May of 1971 and was referred for further hearing solely on the question of Auto Trip's fitness as that question relates to the necessary finding of consistency with the public interest and the readiness, ability and willingness properly to perform the proposed freight forwarder services. (R.A., p. 459)

The proceeding in MC-C-7287 (Sub. 1), AAACon Auto Transport, Inc. - Petition for Declaratory Order, was instituted by AAACon by a petition filed June 21, 1971 for a declaratory order,

(R.A., p. 461) in effect seeking clarification of a restriction in Certificate No. MC-125808 (Sub. 1) and was docketed by the Commission as No. MC-C-7287 (Sub. 1).

By various Orders of the Commission all of the above proceedings were consolidated for hearings in 1971 and 1972 before Administrative Law Judge Joseph C. Reilly. All parties filing this Brief were among the original protestants and intervenors in opposition to the application of Auto Trip in FF-389, (R.A., p. 3) and they were either protestants or were permitted to intervene in MC-C-7287 and MC-C-7287 (Sub. 1) (R.A., p. 1794).

By Initial Decision served November 30, 1973 (R.A., p. 1548) the Administrative Law Judge found in MC-C-7287 that AAACon had been engaged in unjust and unreasonable practices in connection with matters relating to transportation of automobiles, in driveaway service, in interstate or foreign commerce, including its treatment and handling of claims for damages or losses to property arising from such transportation, its issuance of, and practices in connection with, bills of lading which incorporated unreasonable provisions, and incorporated provisions which were at variance with those of the Uniform Bill of Lading governing said transportation and with the holding out to the public by said carrier regarding the insurance coverage and the bonding of drivers provided by AAACon, the transportation performed, all in violation of Section 216(b) and Sections 219 and 20 (11) of the Interstate Commerce Act.

The Administrative Law Judge further found that AAACon had been and is performing operations not authorized by its certificate, including the transportation of repossessed, stolen, or abandoned used passenger automobiles moving to automobile dealers, in driveaway service, in secondary movements, in violation of Section 206(a) of the Interstate Commerce Act and the terms, conditions, and limitations of its certificate, including specifically the condition restricting the authority granted therein against the transportation of any traffic moving to automobile dealers. The Judge further found that the Petition in MC-C-7287 (Sub. 1) should be denied and that the application of Auto Trip for freight forwarder authority in FF-359 should be denied for the reason that the applicant was found not fit.

Exceptions to the Initial Decision were filed on behalf of AAACon and Auto Trip, and Replies were filed by many parties. A series of petitions to reopen the record for the receipt of further evidence and offering settlement were filed by AAACon and Auto Trip, and various replies were filed thereto. By a decision (R.A., p. 1793) and Order (R.A., p. 1812) dated April 7, 1976, Division One of the Commission affirmed the decision of the Administrative Law Judge finding AAACon unfit and entering a cease and desist Order in MC-C-7287, denying the petition for declaratory relief in MC-C-7287 (Sub. 1) and denying the application in FF-359.

Petitions for reconsideration, for reopening the proceeding

and for stay pending judicial review were filed and replies thereto. By order entered July 12, 1976 the Commission denied AAACon's petitions to reopen and rejected the tender of further evidence. (R.A., p. 1814).

III.
PROCEEDINGS BEFORE THE COURT

On or about June 17, 1976 petitioner filed a Petition for Review and Motion for Stay of the Commission's Order in this Court, naming the United States and the Commission as respondents. Protestants and intervenors before the Commission filed for leave to intervene and have been authorized by the Court to intervene in support of respondents. Petitioner's Motion for Stay pending judicial review was denied.

IV.
POSITION OF RESPONDENTS FILING THIS BRIEF

The respondents for whom this brief is filed support the position of the Commission, and they will defer to it for discussion of matters relating to petitioner's handling of claims arising from its transportation of automobiles, its practices in connection with bills of lading and with its holding out to the public regarding insurance coverage and bonding of drivers. These respondents, however, are particularly concerned with the actions of petitioner in violating the restrictions contained in its Certificate of Public Convenience and Necessity in MC-125808 (Sub. 1) restricting AAACon against the transportation of traffic to automobile dealers, and they support the Commission decision that such

restriction is clear and unambiguous, serves a useful purpose, and that the Petition for Declaratory Order should be denied.

V.
SCOPE OF JUDICIAL REVIEW

The function of the reviewing Court is very restricted. It is limited to ascertaining whether there is warrant in the law and the facts for what the Commission has done. It cannot substitute its own view concerning what should be done for the Commission's judgment upon matters committed to its determination, if that has support in the record and the applicable law. United States v. Pierce Auto Freight Lines, 327 U.S. 515, 536 (1946).

The Courts have recognized that the amendment of 28 U.S.C. §2321 eliminating the three-judge district court procedure for review of orders of the Interstate Commerce Commission has not altered the limited scope of review. As the U.S. Court of Appeals, Eight Circuit, stated November 10, 1975 in Warren Transport, Inc. v U.S., 525 F. 2d 148 at 151:

> "In this circuit a petition for review of a Commission's order will be denied on a summary basis when the order is based on the evidence and supported by a rational judgment of the Commission. This does not mean that this court will fail in its obligation to review thoroughly every record to ascertain that evidence as a whole supports the Commission's findings and that the proper legal standards have been applied.

> It is rare that a Commission order is not based on relevant factors or that the exercise of its expertise can be termed such an abuse of discretion as to require reversal by the courts. That such limited review was the intent of Congress is clear. See I.C.C. v. Parker Motor Freight, 326 U.S. 60, 65, 65 S. Ct. 1490, 89 L. Ed. 2051 (1945)."

See also Midwest Coast Transport, Inc. v. I.C.C., 536 F. 2d 256 (8th Cir. 1976); Hilt Truck Line, Inc. v U.S., 532 F. 2d 1199 (8th Cir. 1976).

When dealing with the particular issue of construction of certificates, the scope of judicial review is even more restricted. The Commission enjoys wide discretion in matters involving the grant or denial of certificates and the construction of certificates. In Beaufort Transfer Co. v United States, 324 F. Supp. 649 (E.D. Mo. 1971), appeal dismissed 404 U.S. 806 (1971), the district court stated at 324 F. Supp. 652:

> "The interpretation of a certificate issued by the ICC is properly with the ICC and not the courts.' Heavy Specialized Carriers Conference v. United States, D.C., Mo., 231 F. Supp. 968, 970. We are bound by the interpretation the Commission places upon a certificate it issues unless such interpretation is capricious or arbitrary and constitutes an abuse of discretion or departs from established legal standards. Jenkins Truck Lines, Inc. v United States, D.C. Minn., 318 F. Supp. 207. See also Burlington-Chicago Cartage, Inc. v United States, D.C. Ill., 178 F. Supp. 857, and E. B. Law and Son, Inc. v United States, D.C.N. Mex., 247 F. Supp. 846, 848."

See also Slay Transportation Co., Inc. v. U.S., 381 F. Supp. 1174 (D.C. Mo. 1974).

The possibility of drawing two inconsistent conclusions from the evidence does not prevent an administrative agency's finding from being supported by substantial evidence. National Labor Relations Board v. Nevada Consolidated Copper Corp., 316 U.S. 105 (1942). Substantial evidence must be enough to justify, if the trial were to a jury, a refusal to direct a verdict when the conclusion sought to be drawn from it is one of fact for the jury. National Labor Relations Board v. Columbian Enameling & Stamping Co., 306 U.S. 292, 300 (1939). This standard of review was deliberately adopted by Congress in Section 10(e) of the Administrative Procedure Act, 5 U.S.C. §706(2)(E). It was intended to give proper respect to the expertise of the administrative tribunal and to help promote the uniform application of agency rules.

The structuring and interpretation of a certificate of public convenience and necessity is an exercise of the Commission's special expertise. A presumption of validity attaches to such an exercise of expertise, and those who would overturn the commission's judgment undertake the heavy burden of making a convincing showing that it is invalid because it is unjust and unreasonable in its consequences. Permian Basin Area Rate Cases, 390 U.S. 747 (1968). In the absence of exceptional circumstances, the Commission's interpretation of a certificate of convenience and necessity issued by it will not be overturned. Service Storage & Transfer Co. v. Virginia, 359 U.S. 171 (1959).

VI.
ARGUMENT

As indicated hereinbefore in Section IV, respondents filing this brief are concerned with Petitioner's allegations that the Commission erred in its finding that the restriction is clear on its face and unambiguous, in denying the Petition for Declaratory Order, in finding that AAACon had transported vehicles beyond the scope of its authority in violation of the restriction contained in its certificate against traffic "moving to automobile dealers" and in issuing a cease and desist order requiring Petitioner to refrain and abstain from all practices found to be unjust and unreasonable in violation of the Interstate Commerce Act. These related issues will be discussed together.

The decision of the Commission is correct, in accordance with the evidence and consistent with prior decisions of the Commission and the Courts which have repeatedly taken the position that a certificate of public convenience and necessity speaks for itself, unless it is patently indefinite or ambiguous. As the Commission stated in Morgan Drive-Away, Inc. - Extension - Glasgow, Mo., 117 M.C.C. 779 at 782:

> "In interpreting motor carrier authority, the carrier's certificate or permit must be construed according to its terms, regardless of what may have been intended, if those terms are neither patently indefinite nor ambiguous. Sims M. Transport Lines, Inc., Revocation of Certificate, 66 M.C.C. 553, 556 (1956). This rule is followed regardless of whether the practical result is to confer upon the carrier more or less authority than may have been

> intended originally to be granted. Dealers' (Dealers Transit, Inc.) certificate is clear and unambiguous on its fact; it was not acquired by fraud or deceit; and the commodity description contained therein is not the result of any inadvertent ministerial errors . . . . "

See also A. J. Weigand, Inc. Modification of Certificate, 114 M.C.C. 806.

As the United States District Court, Southern District of New York, stated in Nationwide Auto Transporters, Inc. v Auto Driveaway Company, 1975 F.C.C. 82, 517:

> "When interpreting motor carrier authority:
>
> 'The cardinal rule . . . is that the carrier's certificate must speak for itself, and that consideration may ordinarily be given to the circumstances surrounding the grant of such authority only if the authority itself is patently indefinite or ambiguous.' Byers Transportation Co. v United States, 310 F. Supp. 1120, 1124 (W. D. Mo. 1970); Lund v United States, 319 F. Supp. 552, 556 (D. Colo. 1970).

Similarly, the United States District Court of North Carolina set forth the I.C.C. policy on certificate construction in Akers Motor Lines et al v. United States et al, (Malone), 286 F. Supp. 213, stating:

> "In the construction of transportation certificates the Commission's policy is not to consider matters extraneous to the face of the certificates, i.e., events antecedent or subsequent to its issuance, to determine the scope of authority granted unless the terms of the certificates themselves are 'patently ambiguous'. Morehouse - Investigation of Operations and Practices, 81 M.C.C. 614 (1959). The rationale is that it is important that certificates actually confer the transportation rights they purport to confer so as not to place upon carriers and the shipping public the burden

> of investigating the administrative history of certificates to determine the scope of authority granted. Certainly it is preferable that ordinarily certificates 'speak for themselves'. "

As was earlier pointed out by the Commission in Manhattan Coach Lines, Inc. v Adriondack Transit Lines, 42 M.C.C. 123,126:

> "Any other rule would contribute an intolerable uncertainty to the finality of any right granted."

The restriction in AAACon's Certificate against traffic "moving to automobile dealers" means exactly what it says - - - that AAACon cannot handle any automobiles that are moving to automobile dealers. The Commission properly found that the restriction was imposed to protect the interests of motor carriers engaged in the transportation of vehicles to auto dealers, and to define the nature of the service authorized by AAACon's certificate (R.A., p. 1808).

An examination of the original decision granting the certificate in question to AAACon's predecessor in AAACon Drivers Exchange, Common Carrier Application, 102 M.C.C. 393, reveals that the applicant voluntarily amended the language of the authority sought to include a restriction against the transportation of vehicles "to dealers of automobiles and trucks" and that five carriers, including certain intervening respondents in this proceeding, withdrew opposition upon amendment of the application.(102 M.C.C. 394.) This decision also makes it clear that applicant at that time had no objection to the restriction against

traffic to dealers. When the examiner recommended a grant of limited authority restricted, among others, against traffic moving to or from automobile dealers, applicant in exceptions argued only that he erred in imposing the restriction against service from dealers. (102 M.C.C. 394.)

The language of the order granting authority to petitioner's predecessor and the language of the certificate issued contains a restriction "against the transportation of any traffic . . . (3) moving to automobile dealers." There is nothing ambiguous in such language. It may be that AAACon now wishes that such restriction was not included in its certificate but there is nothing uncertain about it. The restriction was placed in the certificate of AAACon to prevent it from transporting vehicles which were regularly handled by protesting motor carriers involved in the original proceeding. The time to object was then not now.

The term "automobile dealers" has an established meaning for the public as well as those engaged in transportation. It is understood to mean a person or company that provides certain services involving automobiles or motor vehicles including but not limited to, selling, buying, leasing, repairing and reshipping. It is also well understood that an "automobile dealer" may have more than one address or location and may deal in both new and used automobiles.

Contrary to the allegations in Petitioner's Opening Brief, the Commission considered the known meaning of the term "automobile

dealers" in the original proceeding resulting in issuance of the certificate. There was no confusion. For example, the Commission allowed evidence to be considered from an auctioneer of vehicles and, although it did not consider such auctioneer to be a 'dealer', consideration of such evidence is proper as is consideration of evidence from protesting carriers when the Commission is considering an application for new operating authority. Because certain evidence is heard does not mean that such evidence requires a grant of authority. The limitation in the certificate issued to AAACon against handling traffic "moving to automobile dealers" was obviously motivated by sound reasons for the regulation of carriers in this manner, and it is clear that the Commission was aware that opposing carriers serving the public had protested the application to protect themselves against revenue losses but had withdrawn following the amendments being made by AAACon's predecessor, (102 M.C.C. 394.) Grants of operating authorities as well as restrictions in operating authorities vary from carrier to carrier depending upon the evidence presented.

The Commission in the order from which this appeal is taken specifically reviewed the certificate of AAACon and found that the intent of the certificate was clear and that it was not ambiguous. (R.A., p. 1808). Thus, it properly denied the petition of AAACon for a declaratory order. As the U.S. District Court for the Eastern District of Missouri,

Eastern District, stated in Beaufort Transfer Co., et al v U.S. et al, 324 F. Supp. 649" . . . although it is possible to interpret the certificate otherwise, the interpretation of the Commission is a reasonable one and neither capricious nor arbitrary", and it found no abuse of discretion in the refusal of the Commission to reopen and modify the certificate.

The contention of AAACon that the Commission erred in finding that it had transported vehicles beyond the scope of its authority in violation of the restriction in its certificate against traffic moving to automobile dealers can hardly be taken seriously. Substantial evidence appears on the record to support the decision of the Commission that Petitioner has extended service beyond the limits of its certificate. A witness for the Bureau of Enforcement submitted an analysis of 15 shipments, the consignee in each of which was an automobile dealer (R.A., p. 1594). AAACon admits that such a movement occurred (Petitioner's Opening Brief, p. 44, R.A., p. 1982), and the fact that AAACon dismissed an employee does not negate the occurrence. As principal, AAACon is responsible for the acts of its agents. It is also clear from the evidence that AAACon handled shipments to various consignees such as Allen Paul Oldsmobile (R.A., p. 1977), Ed Cox Motor Company (R.A. 1979) and Atlantic Pontiac (R.A. p. 1981). Despite excuses and attempts by AAACon to explain away such movements, they did, in fact, occur, and it cannot be error for the Commission to make a finding that AAACon transported vehicles beyond the scope of its authority.

In view of the evidence, the Commission order requiring AAACon to cease and desist, and thereafter refrain and abstain from all practices found in the report to be unjust and in violation of the Interstate Commerce Act is entirely proper (R.A., p. 1812) as is its related finding that AAACon and Auto Trip are unfit at this time for a grant of additional authority (R.A., p. 1809).

Section 207 (a) of the Interstate Commerce Act provides that an applicant for operating authority must establish that it is fit, willing and able properly to perform the proposed service and to conform to the provisions of the Interstate Commerce Act and the Commission's rules and regulations thereunder. Section 410 also provides that the Commission must determine if a freight forwarder applicant is qualified for a permit. As the United States District Court, District of Connecticut, stated on August 30, 1972 in Terminal Taxi v U.S., 1972 F.C.C. paragraph 82363:

> "The Commission has pointed out that in determining whether past violations of the Act render an applicant unfit,
>
> > 'There is no exact formula which must be followed in making the determination, and each case must be decided on the facts presented, consideration being given to such factors as the nature and extent of the past violations, the effect thereof, upon regulation mitigating circumstances, and whether the carrier's past conduct represents a flagrant and persistent disregard of the provisions of the Act. Chicago Exp., Inc. -- Purchase--Whippet

> Motor Lines Corp., (13 Federal Carriers Cases Par. 34,423), 75 M.C.C. 531, ' National Transp. Co. --Purchase--Hartford Transp. Co. (16 Federal Carriers Cases Par. 35,884), 97 M.C.C. 206,211 (1965)."

Plaintiff in the Terminal Taxi case, like the Petitioner in the instant proceeding, did not question the validity of this standard but contended that the decision of the Commission constituted an abuse of discretion and was not supported by substantial evidence on the record. The Court reviewed the record and quoted the Commission that "a fit carrier . . . is one that endeavors to be continually in compliance through its own efforts and not because of coercive and direct supervision." 112 M.C.C. 796 at 805.

The Court also reviewed other Commission decisions in deciding that the Commission had not been arbitrary in finding Terminal Taxi unfit. The Court stated:

> "The Commission has . . denied licenses to applicants whose unlawful activities were not especially severe or were limited to a moderate number of instances. See, E.G., Preston K. Meyer, common carrier application, 81 M.C.C. 57, 60 (1959); J. J. Gentry Extension - Douglas County, Oregon (13 Federal Carrier Cases ¶34,488) 78 M.C.C. 473,475 (1958); Burnham Warehouses, Inc., Extension - Columbus, GA., 67 M.C.C. 799,800 (1956)."

There was substantial evidence before the Commission upon which to base its decision that "the management of AAACon and, by implication, Auto Trip, is not willing and able to comply with the

appropriate laws, rules, and regulations" and to conclude that AAACon is unfit and Auto Trip not qualified for a grant of authority (R.A., p. 1809). As indicated hereinbefore, however, respondents filing this brief will defer to the Commission any discussion concerning other elements of its investigation and ultimate findings pertaining to fitness.

A number of judicial expressions, however, have probed the perimeter of the wide area within which the Commission is empowered by Congress to exercise discretion in reaching conclusions respecting the matter of public convenience and necessity.

In Chesapeake & O.P. Co. v. United States, 283 U.S. 35, 42 (1931), it was emphasized that:

> "There is no specification of the considerations by which the Commission is to be governed in determining whether the public convenience and necessity require the proposed construction. Under the act it was the duty of the Commission to find the facts and, in the exercise of a reasonable judgment, to determine that question."

The Court in United States v Detroit & Cleveland Nav. Co., 326 U.S. 236, 241 (1945), observed that the Commission "has been entrusted with a wide range of discretionary authority.***" A variation of this expression appears in decisions where it has been said that the Commission has the administrative discretion "to draw its conclusion from the infinite variety of circumstances which may occur in specific instances." Interstate Commerce Commission v. Parker, 326 U.S. 60, 65 (1945); Consolidated Freightways, Inc. v. United States, 191 F. Supp. 5, 6

[1960 - Mont.]; Lang Transp. Corporation v. United States 75 F. Supp. 915, 928); Coyle Lines 115 F. Supp. 272, 279); R-C Motor Lines, Inc. v. United States, 241 F. Supp. 124, 127 [1965 - M.D. Fla.]; Acme Fast Freight v. United States, 146 F. Supp. 369, 372-373 [1956 - Dela.].

The Commission in the exercise of its discetionary judgment can promulgate standards for weighing public convenience and necessity, and "is free to alter its policies and standards when the necessity, in its judgment, arises." Youngblood Truck Lines, Inc. v. United States, 221 F. Supp. 809, 818 [1963 - W.D.N.C.]. It is not proper for the reviewing Court to indulge in speculation that the Commission's decision rested upon some unexpressed premise. Carolina Scenic Stages v. United States, 202 F. Supp. 919, 925 [1962 - W.D.S.C.].

The conclusions of the Commission need not be consistent with those reached in similar cases or in an earlier decision subject to reversal. Consistency is not a requirement. Alabama Highway Express, Inc. v. United States, 241 F. Supp. 290, 293 [1965 - N.D, Ala.], aff'd per curiam 382 U.S. 106 (1965); Coyle, supra (115 F. Supp. at 279); William N. Feinstein & Company v United States, 209 F. Supp. 613, 620 [1962 - S.D. N. Y.]; Lang, supra (75 F. Supp. at 925); United Van Lines, Inc. v. United States, 266 F. Supp. 586, 589 [1967 - E. D. Mo.]. This rule applies even though a Court may "have difficulty reconciling the decision of the Commission" with that in another case. Chesapeake Motor Lines, Inc. v. United States, 176 F. Supp. 98, 101 [1959 - Md].

The "Commission is not compelled to annotate to each finding the evidence supporting it," nor is it necessary that findings appear in great detail. Pierce, supra (327 U.S. at 529); Capital Transit v. United States, 97 F. Supp. 614, 621); Coyle, supra (115 F. Supp. at 276); Norfolk Southern Bus Corp. v. United States, 96 F. Supp. 756, 759 [1950 - E.D. Va.], aff'd per curiam 340 U.S. 802 (1950); Southern Railway, supra (180 F. Supp. at 192).

There is no requirement that the Commission specify the weight to be given any item of evidence or fact. Curtis, Inc. v. United States, 225 F. Supp. 894, 902 [1964 - Colo.], aff'd per curiam 378 U.S. 128 (1964). The evidence supporting a finding may even be "meager." Yale Transportation Corp. v. United States, 185 F. Supp. 96, 102 [1960 - S.D., N.Y.], aff'd per curiam 365 U.S. 566, rehearing denied 366 U.S. 947 (1961).

Even though the Court and the Commission may reasonably differ, it is beyond the province of a reviewing Court to attempt to weigh the evidence. Aero Mayflower Transit Company v. United States, 208 F. Supp. 303, 305 [1962 - S.D. Calif.]; Alabama Highway, supra (241 F. Supp. at 293); Consolidated Freightways, supra (191 F. Supp. at 6); Interstate Commerce Commission v. Jersey City, 322 U.S. 503, 512 (1944). Even a Court's disagreement or view that conclusions are contrary to the weight of evidence is not sufficient to invalidate a Commission's decision, Edwards Motor Transit Company v. United States, 201 F. Supp.

918, 922 [1962 - M.D. Pa.].

VII.
CONCLUSION

For all these reasons, intervening respondents filing this brief respectfully request that this Honorable Court (1) deny plaintiff's appeal, and (2) affirm the decision of the Interstate Commerce Commission in these matters.

Respectfully submitted,

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CERTIFICATE OF SERVICE

The undersigned certifies that he has this day served a copy of the foregoing Opening Brief by first class mail, postage prepaid, upon all parties to this proceeding:

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